

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3510 of 1985

Date of decision: 24-7-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LALJI SOMAJI MAKWANA

Versus

STATE OF GUJARAT  
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Appearance:

MR PM THAKKAR for Petitioner  
SERVED for Respondent No. 1  
None present for Respondent No. 2  
MR KH BAXI for Respondent No. 3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/07/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

This petition under Article 226 of the Constitution of India is directed against respondent No.2 in terminating the services of the petitioner. It is not in dispute that the petitioner was appointed as peon cum watchman in class IV service on probation under order dated 18th January 18, 1984. Under the impugned order he was discharged from service as his work was not found satisfactory. So it is a case of discharge simpliciter of a probationer from service as his work was not satisfactory. The contention of the counsel for the petitioner is that under annexure-B respondent No.3 has called upon the petitioner to explain as to why necessary action should not be initiated against him for the alleged misconduct and as such the order of discharge is not termination simpliciter but a punitive order.

2. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

3. From the reply to the special civil application I find that the petitioner has been given sufficient opportunity from time to time to improve his work. But he has not availed of that opportunity. His period of probation was extended with clear understanding that he should improve his work, but still he has not improved his work. He was in the habit of remaining absent from duty, and many defaults and errors were noticed in his work. It is true that the petitioner was called upon to show cause why disciplinary action should not be initiated. But merely because disciplinary action has not been initiated and the petitioner has been discharged from service while he was a probationer it cannot be said that the order is punitive in nature. The petitioner has not raised any plea of mala fides. Even after giving of the said notice, it appears from the reply that the petitioner has not discharged his duties satisfactorily. From the document produced on record by the respondents along with the reply I am satisfied that the petitioner's work was not satisfactory and in the facts of this case the termination of service cannot be said to be by way of punishment or penal in nature. The order of termination is innocuous and it does not cast any stigma also. In this connection it is advantageous to refer to the

decision of the Supreme Court in the case of K. V. Krishnamani vs. Lalit Kala Academy, reported in JT 1996(6) SC 312. That was also a case where the service of a probationer was terminated and contention was raised that the reason given in the counter would constitute foundation for dismissal for misconduct. In para 4 of the judgment the apex court observed as under.:

"It is contended by the appellant that since the averments made in the counter would constitute foundation for dismissal for misconduct, an enquiry in this behalf was required to be made. On the other hand, it is contended by the respondent that during the probation the appellant did not acquire any right to the post. If on being found suitable he was regularised, only then he would have acquired the right to continue in the post. During probation, it was found that his services were not satisfactory and reasons were given in support thereof. Thus they do not constitute foundation but motive to terminate the services. We find force in the contention of the respondent. They have explained that the driving of the staff car was not satisfactory and that, therefore, they have terminated the services of the appellant during probation. The very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable, it certainly has power to terminate the services of the employee. Under these circumstances, it cannot but be held that the reasons mentioned constitute motive and not foundation for termination of service. Therefore we hold that the High Court has not committed any error of law."

Annexure B under which explanation of the petitioner was called may constitute motive, but it cannot be said to be foundation for termination of service of the petitioner. Totality of the facts have to be considered and as stated earlier, the petitioner's work was not found satisfactory by the authority and despite giving him warning from time to time he has not improved his work.

4. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated.

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